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THE AMERICAN TOBACCO COMPANY

AND

GUARANTY TRUST COMPANY OF NEW YORK

AS TRUSTEE

TRUST AGREEMENT

Dated November 1, 1918.

\$25,000,000

SEVEN PER CENT. SERIAL GOLD NOTES

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This Agreement, made as of the 1st day of November, 1918, in the City of New York, between THE AMERICAN TOBACCO COMPANY, a corporation duly organized and existing under the laws of the State of New Jersey (hereinafter called the "Company"), party of the first part, and GUARANTY TRUST COMPANY OF NEW YORK, a corporation duly organized and existing under the laws of the State of New York (hereinafter called the "Trustee"), party of the second part:

WHEREAS the Company is authorized to borrow money for its corporate purposes and to issue its notes or other obligations therefor; and

WHEREAS the Company for its lawful corporate purposes has duly authorized the issuance of its notes, to be known as its Seven Per Cent. Serial Gold Notes, for the aggregate principal amount of Twenty-Five Million Dollars (\$25,000,000), each for the principal sum of One Thousand Dollars (\$1,000) all to be dated November 1, 1918, to be issued in five series, said series to be known as Series A, Series B, Series C, Series D and Series E, respectively, the principal amount of each series and the date when the respective series are to be payable being as follows:—Series A for \$5,000,000 payable on November 1, 1919, Series B for \$3,333,000. payable on November 1, 1920, Series C for \$3,333,000. payable on November 1, 1921, Series D for \$3,334,000. payable on November 1, 1922, and Series E for \$10,000,000. payable on November 1, 1923; said notes to be issued as coupon notes registerable as to principal only, and to bear interest at the rate of seven per cent. (7%) per annum from November 1, 1918, payable semi-annually on the first day of May and the first

day of November in each year until the principal sum be paid, and to be duly authenticated by the certificate of the Trustee hereunder; and

WHEREAS the Company, in the exercise of its corporate powers, and in pursuance of appropriate resolutions of its Board of Directors, has duly determined to establish the terms and conditions on which such notes are to be issued, by the execution and delivery of this Agreement; and

WHEREAS the notes and interest coupons and the Trustee's certificate therein provided for are to be substantially in the following form:

[FORM OF NOTE.]

UNITED STATES OF AMERICA

STATE OF NEW JERSEY

THE AMERICAN TOBACCO COMPANY

SEVEN PER CENT. SERIAL GOLD NOTE SERIES

No. \$1,000

THE AMERICAN TOBACCO COMPANY, a corporation of the State of New Jersey (hereinafter called the Company), for value received, hereby promises to pay to Guaranty Trust Company of New York (hereinafter called the Trustee) or bearer, or in case this note be registered, to the registered holder hereof, the sum of One Thousand Dollars in gold coin of the United States of America of or equal to the present standard of weight and fineness, at the office of Guaranty Trust Company of New York in the Borough of Manhattan, City and State of New York, on the first day of November, 19 , and to pay interest thereon from and including November 1, 1918, in like gold coin at the rate of seven per cent. (7%) per annum on May 1, and November 1, in each year until

such principal sum shall be paid, on presentation and surrender at said office of the annexed coupons as they severally become due. Both principal and interest of this note are payable without deduction for any tax, assessment or other governmental charge which the Company or the Trustee hereinafter mentioned may be authorized or required to pay thereon or to retain or deduct therefrom by virtue of any present or future law or requirement of the United States of America, or of any state, county, municipality or other taxing authority therein, except such portion of any Federal income tax in respect to income derived from such interest as shall be in excess of two per cent.

This note is one of a duly authorized issue of notes of the Company limited to the aggregate principal amount of Twenty-Five Million Dollars (\$25,000,000) at any one time outstanding, known as its Seven Per Cent. Serial Gold Notes, all of like tenor, except as to dates of maturity, and all issued under and pursuant to an Agreement dated November 1, 1918, duly executed by the Company to Guaranty Trust Company of New York, as Trustee. As provided in said Agreement, said notes are issuable in five series, designated Series A to E, inclusive, the principal amount and date of maturity of each series being as follows:—Series A for \$5,000,000 maturing on November 1, 1919, Series B for \$3,333,000 maturing on November 1, 1920, Series C for \$3,333,000 maturing on November 1, 1921, Series D for \$3,334,000 maturing on November 1, 1922, and Series E for \$10,000,000 maturing on November 1, 1923. Reference is hereby made to said Agreement for a description of the terms and conditions on which such notes are issued, and of the rights of the Trustee and the holders of the notes under the same. Except as provided in said Agreement, all rights of action on this note and the coupons hereto attached are vested exclusively in the Trustee, and the enforcement thereof is subject to the provisions of said Agreement.

At the option of the Company all of said notes or all the notes of any one or more series first maturing, may be redeemed at any time prior to maturity, on at least thirty days' published notice, as provided in said Agreement, at the principal amount thereof and accrued

interest, together with the following premiums on the principal amount thereof: five per cent. (5%) in the case of any series payable four years or more from the date fixed for redemption, four per cent. (4%) in the case of any series payable three years or more but less than four years from the date fixed for redemption, three per cent. (3%) in the case of any series payable two years or more but less than three years from the date fixed for redemption, two per cent. (2%) in the case of any series payable one year or more but less than two years from the date fixed for redemption, and one per cent. (1%) in the case of any series payable in less than one year from the date fixed for redemption.

In case of certain defaults specified in the Agreement, the principal of this note and of all the other notes of this issue may be declared and may become due and payable in the manner and with the effect provided in the Agreement.

This note shall pass by delivery unless registered in the owner's name at the office or agency of the Company in the Borough of Manhattan, City of New York, such registration being noted hereon. After such registration no transfer hereof shall be valid, unless made by the registered owner in person or by his duly authorized attorney and similarly noted hereon; but the same may be discharged from registration by being in like manner transferred to bearer, and thereupon transferability by delivery shall be restored, but this note may again from time to time be registered or transferred to bearer as before. Such registration shall not, however, affect the negotiability of the coupons, which shall continue to be transferable by delivery.

No recourse shall be had for the payment of the principal of or the interest upon this note, or for any claim based thereon, or otherwise in respect thereof, or of the Agreement under which this note is issued, against any incorporator, stockholder, officer or director, past, present or future, of the Company, or of any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, such liability being by the accept-

ance hereof, and as part of the consideration of the issue hereof, expressly released.

This note shall not be valid or become obligatory for any purpose until it shall have been authenticated by the execution of the certificate hereon endorsed by the Trustee under the Agreement.

IN WITNESS WHEREOF The American Tobacco Company has caused this note to be signed by its President or a Vice-President, and its corporate seal to be hereunto affixed and attested by its Secretary or an Assistant Secretary, and coupons for said interest bearing the engraved fac-simile signature of its Treasurer to be attached hereto, as of the first day of November, 1918.

THE AMERICAN TOBACCO COMPANY,
By

.....
President.

Attest:

.....
.....Secretary.

[FORM OF INTEREST COUPON.]

No. \$35.

On the first day of _____, 19____, The American Tobacco Company will pay to the bearer, at the office of Guaranty Trust Company of New York in the Borough of Manhattan, City and State of New York, Thirty Five Dollars (\$35.) in United States gold coin, without deduction for taxes, except so much of any Federal income tax as may exceed two per cent. of the face value hereof, as specified in the Note, being six months' interest then due on its Seven Per Cent. Serial Gold Note, Series _____, No. _____, unless such note shall have been called for previous redemption.

.....
Treasurer.

[FORM OF TRUSTEE'S CERTIFICATE.]

This is one of the notes described in the within mentioned Agreement.

GUARANTY TRUST COMPANY OF NEW YORK, Trustee,

By.....

and

WHEREAS all acts, conditions and things necessary to make said notes, when executed by the Company and certified by the Trustee, the valid, binding and legal obligations of the Company, and to make this Agreement a valid and binding agreement for the enforcement of the payment of said notes and the interest thereon, have been done and performed, and the execution and issue of said notes and the execution of this Agreement have in all respects been duly authorized, and the Company has executed this Agreement and proposes to issue the notes hereby secured, in the exercise of the legal right and power in it vested,

Now, THEREFORE, in consideration of the premises, and of the sum of one dollar duly paid by the Trustee to the Company, the receipt whereof is hereby acknowledged, and of the purchase and acceptance of the said notes by the holders thereof, it is hereby covenanted and agreed by and between the parties hereto, for the equal benefit of the holder or holders of any and all of the said notes and coupons at any time issued hereunder, as follows:

ARTICLE I.

EXECUTION AND DELIVERY OF NOTES.

The amount of notes which may be executed by the Company and certified by the Trustee is limited so that never at any one time shall there be outstanding notes issued hereunder in an aggregate principal amount exceeding Twenty-Five Million Dollars (\$25,000,000).

Notes for the aggregate principal amount of Twenty-Five Million Dollars (\$25,000,000) and no more shall be certified by the Trustee upon the request of the Company at once or at any time or times hereafter and delivered in accordance with the order or orders of the Company evidenced by a writing or writings signed by its President or a Vice-President and its Treasurer or an Assistant Treasurer.

The notes shall be issued in coupon form, payable to Guaranty Trust Company of New York, as Trustee, or, bearer, and shall be registerable as to principal only. The notes, coupons and Trustee's certificate shall be substantially of the tenor and purport hereinbefore set forth, and the notes shall be known as the Company's Seven Per Cent. Serial Gold Notes. They shall be dated November 1, 1918, shall be issued in five series, said series to be known as Series A, Series B, Series C, Series D and Series E, respectively, and the principal amount of each series and the dates when the respective series are to be payable being as follows: Series A for \$5,000,000 payable on November 1, 1919, Series B for \$3,333,000 payable on November 1, 1920, Series C for \$3,333,000 payable on November 1, 1921, Series D for \$3,334,000 payable on November 1, 1922, and Series E for \$10,000,000 payable on November 1, 1923. Said notes shall bear interest from November 1, 1918, at the rate of seven per cent. (7%) per annum, payable semi-annually on the first day of May

and the first day of November in each year until the principal sum be paid. They shall be in the denomination of \$1,000 each, and all notes of each series shall bear their series letter and shall be numbered consecutively.

Until permanent coupon notes are ready for delivery there may be issued, certified and delivered in lieu thereof, upon the conditions above stated, temporary notes without coupons, each for one thousand dollars principal amount, or a multiple thereof, and otherwise substantially of the tenor of the notes hereinbefore described, and as soon as such permanent coupon notes can be prepared the Company will execute and the Trustee will certify and deliver the same with all unmatured coupons thereto attached in exchange for such temporary notes. Until so exchanged, such temporary notes shall in all respects be entitled to the same benefit of this Agreement as permanent notes issued and certified hereunder. Upon surrender of any temporary note or notes at the office or agency of the Company in the Borough of Manhattan, City of New York, with request from the holder thereof that there be issued, certified and delivered in exchange therefor other temporary notes for several specified amounts of principal, but for the same aggregate principal amount as the temporary notes surrendered, temporary notes shall be issued, certified and delivered in accordance with such request. Every temporary note surrendered in exchange, either for other temporary notes or for permanent notes, shall be destroyed. Any interest on any temporary note paid prior to any exchange of such temporary note for another temporary note or notes or for a permanent note or notes, shall be noted in writing upon such temporary note.

Execution of notes by the proper officers at the time of execution shall bind the Company, notwithstanding any change of officers prior to certification or delivery,

and coupons attached to said notes, bearing the fac-simile of the signature of the person who is the Treasurer of the Company at the date of this Agreement or at any time thereafter, shall bind the Company, notwithstanding such person shall have ceased to hold such office prior to certification and delivery.

No temporary or permanent note shall be valid or shall become obligatory for any purpose until it shall have been authenticated by the certificate of the Trustee endorsed thereon.

The certificate of the Trustee upon any temporary or permanent note executed by the Company shall be conclusive evidence and the only evidence that the note so certified has been duly certified and delivered hereunder and that the holder thereof is entitled to the benefit of the trust hereby created.

In case any note with the coupons thereto appertaining shall be mutilated or destroyed, the Company in its discretion may issue, and thereupon the Trustee shall authenticate and deliver, a new note of like tenor and date, bearing the same serial number or numbers, in exchange and substitution for, and upon cancellation of, the mutilated note and its coupons, or in lieu of and in substitution for, the note and its coupons so destroyed. The applicant for such substituted note shall furnish the Company and the Trustee satisfactory evidence of the destruction of such note and its coupons, and said applicant shall also furnish indemnity satisfactory to both of them in their discretion.

ARTICLE II.

COVENANTS OF THE COMPANY.

The Company hereby covenants as follows:

SECTION 1. That it will duly and punctually pay or cause to be paid to every holder of any note issued here-

under the principal and interest accruing thereon in gold coin of the United States of America of or equal to the present standard of weight and fineness, upon the dates and at the place or places and in the manner mentioned in said notes or in the coupons thereto appertaining, in accordance with their tenor and effect, without deduction from either principal or interest of any tax, assessment or other governmental charge which the Company or the Trustee may be required or authorized to pay thereon or to retain or deduct therefrom by virtue of any present or future law or requirement of the United States of America, or of any state, county, municipality or other taxing authority therein (except such portion of any Federal income tax in respect to income derived from such interest as shall be in excess of two per cent.). As notes and the coupons annexed to said notes are paid they shall be cancelled and no other notes shall be issued in lieu thereof. Notes and coupons shall not be kept alive after maturity by extension thereof or by purchase by or on behalf of the Company.

SECTION 2. That it will keep an office or agency in the Borough of Manhattan, City of New York, while any of said notes are outstanding, where notices, presentations and demands to or upon the Company in respect of said notes or their coupons may be given or made, and will from time to time give written notice to the Trustee of such office or agency. In default of any such office or agency, presentation and demand may be made and notice served at the office of the Trustee. That at an office or agency to be maintained by it in the Borough of Manhattan, City of New York, it will keep registry books on which upon request any note shall be registered as to the principal thereof, and the transfer of any note so registered shall be registered, all without expense to the

holder. The Trustee shall have access to said books at all reasonable times, and upon request in writing shall be furnished with a list of the registrations shown thereon at any specific date.

SECTION 3. So long as any of the notes are outstanding, the Company after the date of this Agreement will not mortgage or pledge any of its real or personal property, or any part thereof, except United States Government obligations.

In case of a breach of this covenant, in addition to any other penalty herein provided for such breach, the Company hereby creates a lien and charge in favor of every note issued hereunder prior and superior to the lien in favor of any other bonds, notes or other obligations secured by any mortgage or pledge not herein permitted but junior and subordinate to the lien of the Forty-Year Six Per Cent. Gold Bonds of the Company maturing October 1, 1944, and the Four Per Cent. Gold Bonds of the Company maturing August 1, 1951, hereinafter more specifically referred to in Section 4 of this Article 2.

To make this covenant fully effectual, the Company hereby includes under and secures by any mortgage, pledge or deed of trust hereafter made or executed by the Company, not herein permitted, any and all notes issued hereunder, with the same force and effect as though each and every said note were specifically named and included in any such future mortgage, pledge or deed of trust, in priority to any bonds, notes or other obligations issued and secured by such future mortgage, pledge or deed of trust, excepting the said Six Per Cent. Gold Bonds and Four Per Cent. Gold Bonds.

SECTION 4. On the date of the execution and delivery of this Agreement there are issued and outstanding under

the Trust Indenture made by this Company to Morton Trust Company, Trustee, dated October 20, 1904 (under which Trust Indenture Guaranty Trust Company of New York is now Trustee), \$674,200. principal amount, and no more, of Forty-Year Six Per Cent. Gold Bonds of the Company maturing on October 1, 1944, and \$612,550 principal amount and no more of the Four Per Cent. Gold Bonds of the Company maturing August 1, 1951; and \$752,750 principal amount and no more of Four Per Cent. Gold Bonds of Consolidated Tobacco Company, maturing August 1, 1951, issued under a Trust Indenture made by Consolidated Tobacco Company to Morton Trust Company, as Trustee, dated June 15, 1901 (under which Trust Indenture Guaranty Trust Company of New York is now Trustee), payment of which bonds has been assumed by the Company; so long as any of the notes are outstanding, the Company will not issue any additional of its said Forty-Year Six Per Cent. Gold Bonds, or Four Per Cent. Gold Bonds, or of the said Four Per Cent. Gold Bonds of the Consolidated Tobacco Company, except that additional of its said Four Per Cent. Gold Bonds may be issued in exchange for its said Consolidated Tobacco Company Four Per Cent. Gold Bonds as provided under its above mentioned Trust Indenture dated October 20, 1904.

SECTION 5. The Company represents that at the date of the making of this Agreement it owns free of any lien or charge, except as hereinafter set forth in subdivision 1 of this Section 5, and has full corporate power to exercise and is lawfully entitled to exercise all rights as owner of the following shares of stock of the following corporations (hereinafter for convenience referred to as "subsidiary companies") :

1. Ninety thousand seven hundred fifty (90,750) shares of the preferred stock and sixty-one

thousand four hundred thirty (61,430) shares of the common stock of American Cigar Company, a corporation organized and existing under the laws of the State of New Jersey, having authorized and outstanding One hundred thousand (100,000) shares of preferred and one hundred thousand (100,000) shares of common stock of the par value of one hundred dollars (\$100.) each. Of the above 9,000 shares of preferred stock are now pledged by the Company;

2. Thirteen thousand nine hundred seventy-four (13,974) shares of Golden Belt Manufacturing Company, a corporation duly organized and existing under the laws of the State of New Jersey, having an authorized capital of one million seven hundred thousand dollars (\$1,700,000.), consisting of seventeen thousand (17,000) shares of the par value of one hundred dollars (\$100.) each, of which fifteen thousand (15,000) shares are now issued and outstanding;

3. Forty-two thousand five hundred and seven (42,507) shares of the common stock of Mengel Box Company, a corporation duly organized and existing under the laws of the State of New Jersey, having an authorized capital of ten million dollars (\$10,000,000.), consisting of forty thousand (40,000) shares of preferred stock and sixty thousand (60,000) shares of common stock, of the par value of one hundred dollars (\$100.) each, of which no shares of preferred stock and sixty thousand (60,000) shares of common stock are now issued and outstanding;

4. Eleven thousand six hundred sixty (11,660) shares of the preferred stock and nineteen thousand one hundred fifty (19,150) shares of the common stock of Tin Decorating Company of Baltimore, a corporation duly organized and existing under the Laws of the State of New Jersey, having an authorized capital of three million four hundred thousand dollars (\$3,400,000.), consisting of fourteen thousand (14,000) shares of preferred stock

and twenty thousand (20,000) shares of common stock, of the par value of one hundred dollars (\$100.) each, of which twelve thousand (12,000) shares of preferred stock and twenty thousand (20,000) shares of common stock are now issued and outstanding.

The Company will not sell or otherwise dispose of any of the shares of stock of said subsidiary companies or any of them now or hereafter owned by it, unless the proceeds of such sale or other disposition shall be deposited with the Trustee to be applied by the Trustee in accordance with the provisions of Article III of this Agreement.

SECTION 6. The Company will not sell, lease or otherwise dispose of any of the real estate, plants, brands, trade marks, patents or other property, real or personal, now or hereafter owned by it, except "quick assets," as hereinafter defined in Section 10 of this Article II, and except shares of stock of companies other than "subsidiary companies", unless the proceeds of such sale, lease or other disposition shall be deposited with the Trustee to be applied by the Trustee as hereinafter provided in Article III of this Agreement.

SECTION 7. That on or before the first day of February and the first day of August in each year, the Company will furnish to the Trustee a statement in writing, signed by its president or any vice-president and its treasurer or any assistant treasurer, showing:

1. The amount of capital stock of each subsidiary company outstanding on the date of such certificate, specifying the number of shares and the par value of such shares and the number of the shares owned by the Company and whether such shares are free from any lien or pledge;

2. Whether any subsidiary company, since the date of this Agreement or since the date of the last

certificate, has issued any additional shares of stock, and if so the amount of such issue and the number of shares acquired by the Company;

3. Whether the Company since the date of this Agreement or the date of the last certificate, has sold any shares of stock of any subsidiary company, the number of shares so sold and the price realized from such sale and the application of such sale price;

4. Whether the Company, since the date of this Agreement or the date of the last certificate, has sold, leased or otherwise disposed of any of its real estate, plants, brands, trade marks, patents or other property (except "quick assets" as defined in Section 10 of this Article II and except shares of stock of a company other than a subsidiary company), and the consideration received for any such sale, lease or other disposition, and the application thereof.

SECTION 8. That in case any subsidiary company shall issue any additional shares of stock, the Company will forthwith acquire, free from any lien or pledge, such proportion of the additional stock as shall be at least equal to the proportion of the whole thereof held by the Company before the issue of such additional shares.

SECTION 9. That it will promptly pay and discharge all lawful taxes, assessments and governmental charges or levies imposed upon the income and profits of the Company, or upon any property, real, personal or mixed, belonging to the Company, or upon any part thereof, as and when the same may become due and payable, provided, however, that the Company shall not be required to pay any such tax, assessment, charge or levy so long as the validity thereof shall be contested in good faith by appropriate legal proceedings.

SECTION 10. That it will at all times maintain quick assets in an aggregate amount equal to at least one and

three-quarters times (175% of) the aggregate amount of the outstanding notes and all its other liabilities excluding,—

- (a) the aggregate principal amount of dividend certificates now or hereafter issued in lieu of cash dividends, which certificates at the time shall mature later than one year;
- (b) its Forty-Year Six Per Cent. Gold Bonds maturing October 1, 1944, its Four Per Cent. Gold Bonds maturing August 1, 1951 and its Consolidated Tobacco Company Four Per Cent. Gold Bonds maturing August 1, 1951, issued prior to the date of this Agreement, except as provided in Section 4 of this Article 2.
- (c) notes secured by obligations of the United States Government of an aggregate principal amount at least equal to the principal amount of such notes;

Dividend certificates redeemable in stock only and stock itself, now or hereafter issued, whether preferred, common or common B stock or any other class of stock, shall not be taken to be a liability.

The term “quick assets” as used in this Agreement shall be taken to mean:

- (a) cash on hand or in bank;
- (b) leaf tobacco, manufactured stock, stock in process, operating and other supplies, including revenue stamps, all to be valued at actual cost or at the market value thereof if that be lower;
- (c) good and collectible notes, accounts and bills receivable contracted in the ordinary course of business, if such notes, accounts and bills receivable are due within one year (excluding such notes, accounts and bills receivable as are

owing to the Company by corporations, any of whose shares of stock is owned by the Company) ;

- (d) obligations of the United States Government to be valued at not more than the market value (except such obligations as have been used by the Company to secure notes that are hereinbefore excluded as liabilities).

SECTION 11. That it will at all times keep proper books of record and account, in which full, true and correct entries will be made of all dealings and transactions of or in relation to the plants, properties, business and affairs of the Company ; that, within sixty (60) days after the thirty-first day of March, the thirtieth day of June and the thirtieth day of September in each year, the Company will render to the Trustee a statement of its general balance sheet taken at the close of business the thirty-first day of March, the thirtieth day of June and the thirtieth day of September of such year, respectively, setting forth in reasonable detail the financial condition of the Company and the aggregate value of the quick assets of the Company and the aggregate amount of its liabilities within the meaning of this Agreement, and setting forth also the amount then outstanding of its Forty-Year Six Per Cent. Gold Bonds maturing October 1, 1944, its Four Per Cent. Gold Bonds maturing August 1, 1951, and its Consolidated Tobacco Company Four Per Cent. Gold Bonds maturing August 1, 1951, notes secured by obligations of the United States of a par value at least equal to the principal amount of such notes, and dividend certificates issued in lieu of cash dividends, which, at the time mature later than one year. If required by the Trustee, any such statement shall be duly audited by a firm of certified public accountants approved by the Trustee (who may be a firm employed by the Company) who shall file with the Trustee a certificate of such audit.

SECTION 12. That at its own cost and expense it will do or cause to be done all things necessary to preserve and to keep in full force and effect its corporate existence, rights and franchises, and that it will comply with the laws of the United States, of the State of New Jersey and with the laws of any State of the United States applicable to the Company in such manner and form as counsel learned in the law shall advise; and that it will not do or suffer any matter or thing whatsoever whereby the indebtedness evidenced by the notes issued hereunder might or could be impaired.

ARTICLE III.

CONTROL OF PLEDGED SECURITIES.

SECTION 1. Any notes or other obligations pledged with the Trustee, pursuant to the provisions of Sections 5 and 6 of Article II of this Agreement, shall be assigned to the Trustee in its own name or in the name of its nominee or nominees as the Trustee shall determine. The Trustee shall be entitled to collect the principal and interest upon the same and all the moneys so collected together with moneys paid over to the Trustee, pursuant to the provisions of said Sections 5 and 6 of Article II, shall be applied by the Trustee as follows:

- (a) in case the Company has called for redemption all of the notes or all of one or more series of notes, then, upon the written request of the Company signed by its President or a Vice President and by its Secretary or an Assistant Secretary and upon the receipt of moneys, which with the moneys so held by the Trustee, shall be sufficient to redeem all of the notes so called for redemption, the moneys so held by the Trustee under this Article III, or such part thereof as may be included in such writ-

ten request, shall be applied by the Trustee pursuant to such written request to the payment of the notes so called for redemption. The accrued interest on any notes so redeemed shall be paid by the Company and shall not be paid out of the funds held under this Article III.; or

- (b) upon the written request of the Company signed by its President or a Vice President and its Secretary or an Assistant Secretary, the Trustee from time to time at the expense of the Company shall publish a notice at least once in each of two successive weeks in at least two newspapers of general circulation published in the Borough of Manhattan, City of New York, stating the aggregate sum of money which it holds under this Article III which is to be applied to the purchase of notes and that written offers of sale will be received by the Trustee at a date specified in such notice, being not later than twenty (20) days from the date of the first publication, when the Trustee will open offers to sell to it notes hereunder, and, as far as may be, will apply or cause to be applied all sums of money stated in such notice and applicable thereto to the purchase of notes at the lowest prices at which the largest amount of notes can be purchased with such moneys, not exceeding the redemption prices respectively of such notes and accrued interest. The accrued interest on any notes so purchased by the Trustee shall be paid by the Company and shall not be paid out of funds held under this Article III, the Company hereby agreeing to make such payment to the Trustee as requested by it. All notes so purchased shall be canceled and no new notes shall be issued in place thereof. The Trustee shall not be required to apply moneys pursuant to this subdivision (b) of Article III at any one time in amounts of less than \$25,000.00.

- (c) To the extent that the moneys received by the Trustee and held under this Article III are not applied to the purchase of notes or toward the payment of notes called for redemption, such moneys shall be held by the Trustee as security for the payment of the last maturing series of notes, or, in case of default hereunder, applied pursuant to the provisions of Section 5 of Article V of this Agreement.

SECTION 2. Unless to the knowledge of the Trustee an event of default, as hereinafter defined in Section 1 of Article V, shall have happened, the Company may from time to time withdraw for collection any notes or other obligations pledged with the Trustee, pursuant to the provisions of Sections 5 and 6 of Article II of this Agreement, and the Trustee shall deliver such notes or other obligations for collection upon the written order of the Company signed by its Treasurer or an Assistant Treasurer and upon delivery to it of a receipt of the Company also signed by its Treasurer or an Assistant Treasurer stating that the Company has received the notes or other obligations set forth in such receipt in trust, and that the title to such notes or other obligations and the proceeds of any collections made on account of or in payment of principal and interest of the same shall remain in Guaranty Trust Company of New York as Trustee under this Agreement, and that such proceeds as and when received by the Company or its agents shall forthwith be paid over to Guaranty Trust Company of New York as Trustee aforesaid.

The Company shall not be entitled to receive from the Trustee any such notes or other obligations for collection more than thirty (30) days before the date when some interest or principal shall be payable upon each of the notes or other obligations so to be withdrawn.

As to each and every withdrawal which may be made pursuant to this Section 2 of Article III, the Company agrees that it will hold separate and apart, in trust for the Trustee, all notes or other obligations so withdrawn, and the proceeds of any collections on account of or in payment of the principal or interest of such notes or other obligations, and will promptly pay over to the Trustee such proceeds when and as collected by it. In case the Company shall fail to collect and pay over the principal or interest of any notes or other obligations so withdrawn, within thirty (30) days after the date when the principal or interest of any such notes or other obligations is due, then the Trustee, in its discretion, shall have the right forthwith to demand and immediately to receive from the Company all the notes or other obligations so withdrawn, which have not been paid in full.

The Trustee shall be fully protected in making deliveries of notes or other obligations for collection upon delivery to it of the orders and receipts above provided for.

ARTICLE IV.

REDEMPTION OF NOTES.

The Company, at its option, may redeem all of the notes issued hereunder and then outstanding, or all the outstanding notes of one or more series first maturing, at any time prior to maturity, at the principal amount thereof and accrued interest, together with the following premiums on the principal amount thereof: five per cent. (5%) in the case of any series the principal of which is payable four years or more from the date fixed for redemption; four per cent. (4%) in the case of any series the principal of which is payable three years or more but less than four years from the date fixed for redemption; three per cent. (3%) in the case of any series the principal of which is

payable two years or more but less than three years from the date fixed for redemption; two per cent. (2%) in the case of any series the principal of which is payable one year or more but less than two years from the date fixed for redemption, and one per cent. (1%) in the case of any series the principal of which is payable in less than one year from the date fixed for redemption. Notice of intention to redeem shall be given by the Company by publication in two daily newspapers of general circulation published in the Borough of Manhattan in the City of New York, twice a week for four successive weeks, the first publication to be not less than thirty nor more than forty days before such redemption date. A copy of said notice shall also be mailed by the Company at least thirty and not more than forty days before such date to the holders of registered notes which are to be redeemed, at their last addresses appearing upon the registry books kept at the office or agency of the Company. Before the redemption date specified in such notice, the Company will deposit with the Trustee an amount sufficient to redeem all of the outstanding notes which are to be redeemed, to be held for the account of the holders thereof and to be paid to them respectively upon presentation and surrender of said notes with all unmatured coupons thereto attached. The verified certificate of any officer of the Company as to the giving of proper notice of redemption shall be full and complete authority to the Trustee for any action to be taken by it in reliance thereon.

In case the Company shall desire to exercise such right of redemption as to one or more series of notes, the notice of intention to redeem shall state the particular series or series of notes to be redeemed, and that all of the notes in each such series are to be so redeemed.

After the date set for redemption, the notice of intention to redeem having been given by publication and the

necessary funds for redemption having been deposited with the Trustee, said notes shall cease to draw interest and the coupons for interest subsequent to that date shall be void, and such notes shall cease to be entitled to any benefit of this Agreement except to receive payment from the moneys reserved therefor in the hands of the Trustee.

Notes redeemed shall be cancelled and no notes shall be issued in place thereof.

The holder of each and every note issued under this Agreement, hereby agrees to accept payment thereof prior to maturity on the terms and conditions in this Article provided.

ARTICLE V.

REMEDIES OF TRUSTEE AND NOTEHOLDERS.

SECTION 1. If one or more of the following events, herein called "Events of Default" shall happen, that is to say: (1) if default be made in the punctual payment of the principal of any of the said notes, or (2) if default be made in the punctual payment of any installment of interest and such default shall continue for thirty days, or (3) if default be made in the due observance and performance of any other covenant or condition or agreement on the part of the Company, its successors or assigns in the said notes or in this Agreement contained, and any such last named default shall continue for a period of thirty days after written notice thereof shall have been given to the Company by the Trustee, whose duty it shall be to give such notice at the request in writing of the holders of at least twenty-five per cent. in principal amount of the notes at the time outstanding hereunder, or in case (4) an order shall have been made for the appointment of a receiver of the Company or of its prop-

erty and remain in force for thirty days, or the Company shall be judicially declared to be bankrupt or insolvent, or (5) in case the Company shall institute proceedings for voluntary bankruptcy, or shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due—then in each and every such case the Trustee may, and upon written request of the holders of twenty-five per cent. in principal amount of the notes at such time outstanding (not including the principal amount of any series of notes, which, at such time, shall have become due according to the date of maturity specified therein), shall, declare the principal of all notes then outstanding hereunder to be due and payable immediately, and upon any such declaration, the same shall become and shall be immediately due and payable, anything in this Agreement or in said notes contained to the contrary notwithstanding.

This provision, however, is subject to the condition that if at any time after the principal of said notes shall have been so declared and become due and payable and before any judgment or decree for the payment of moneys due shall have been entered, all arrears of interest upon all the notes (with interest upon any overdue installment of interest at the rate of seven per cent. (7%) per annum), and all other sums payable under this Agreement (except the principal of the notes which shall have been declared and become due and payable before maturity) shall have been duly paid and all defaults shall have been made good, then and in every such case the holders of seventy-five per cent. (75%) in principal amount of the notes then outstanding, by written notice to the Company and to the Trustee may rescind and annul such declaration and its consequences; but no such rescis-

sion or annulment shall extend to or shall affect any subsequent default or shall impair any right consequent thereon.

SECTION 2. The Company covenants that (1) in case default shall be made in the punctual payment of any installment of interest on any note or notes at any time outstanding under this Agreement, and such default shall have continued for the period of thirty days, or (2) in case default shall be made in the payment of the principal of any note or notes when the same shall become payable, whether upon maturity of any of said notes or upon declaration as provided in this Agreement, then upon demand of the Trustee the Company will pay to the Trustee for the benefit of the holders of the notes and coupons issued hereunder and then outstanding, the whole amount which then shall have become due and payable on all such notes and coupons then outstanding for interest or principal or both as the case may be, with interest at the rate of seven per cent. per annum upon the overdue principal and installments of interest; and in addition thereto such further amount as shall be sufficient to cover the cost and expenses of collection, including a reasonable compensation to the Trustee, its agents, attorneys and counsel and any expenses or liabilities incurred by the Trustee hereunder.

Until such demand is made by the Trustee, the Company may pay the principal and interest of the notes to the holders and registered owners thereof, and shall not be affected by any notice to the contrary, whether the notes are overdue or not. If, however, demand shall be so made, payment of the notes or of the coupons shall be made thereafter only to the Trustee.

In case the Company shall fail forthwith to pay such amounts upon such demand the Trustee in its own name and as trustee of an express trust shall be entitled and empowered to institute such action or proceedings at law or in equity as may be advised by counsel for the collection of the sums so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company, and collect the moneys adjudged or decreed to be payable out of the property of the Company wherever situated, in the manner provided by law.

SECTION 3. The Trustee shall, upon the written request of seventy-five per cent. (75%) in principal amount of the holders of the notes at any time outstanding hereunder, waive any default hereunder and its consequences, except (1) a default in the payment of the principal of said notes at the respective dates of maturity specified therein, and except (2) a default in the payment of interest on said notes unless, prior to such waiver, all arrears of interest, with interest at the rate of seven per cent. per annum on overdue installments of interest, and all expenses of the Trustee shall have been paid by the Company or shall have been provided for by a deposit with the Trustee of a sum sufficient to pay the same. In case of any such waiver, or in case any proceedings taken on account of any such default shall have been discontinued or abandoned or determined adversely to the Trustee, then and in every such case, the Company, the Trustee and the note holders shall be restored to their former positions and rights hereunder respectively, but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

SECTION 4. All rights of action under this Agreement or under any of the said notes or coupons may be enforced

by the Trustee without the possession of any of the notes or coupons or the production thereof on any trial or other proceedings relative thereto, and any such suit or proceedings instituted by the Trustee shall be brought in its name as Trustee and any recovery of judgment shall be for the ratable benefit of the holders of said notes and coupons.

SECTION 5. Any moneys collected by the Trustee shall be applied as follows at the date fixed by the Trustee for the distribution of such moneys, upon presentation of the several notes and coupons, and stamping thereon the payment, if only partially paid, and upon the surrender thereof, if fully paid:

First. To the payment of costs and expenses, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and of all expenses, liabilities and advances made or incurred by the Trustee.

Second. In case the principal of the notes issued under this Agreement shall not have become due, to the payment of the interest in default in the order of the maturity of the installments of such interest, with interest on the overdue installments at the rate of seven per cent. per annum; such payments to be made ratably to the persons entitled thereto, without discrimination or preference.

Third. In case the principal of the notes shall have become due by declaration or otherwise, to the payment of the whole amount then owing or unpaid upon the notes then outstanding for principal and interest, with interest at the rate of seven per cent. per annum on the overdue principal and installments of interest; in case such moneys shall be insufficient to pay in full the whole amount so due and unpaid upon the said notes, then to the payment of such principal and interest without pref-

erence or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, ratably to the aggregate of such principal and accrued and unpaid interest.

SECTION 6. No holder of any note issued hereunder shall have any right to institute any suit, action or proceeding in equity or at law, for the collection of any sum due from the Company on such note on account of principal or interest, or for the appointment of a receiver, or for any other remedy hereunder or upon or by reason of such note, unless and until such holder shall have previously given to the Trustee written notice of such default and of the continuance thereof, as hereinbefore provided, and also unless or until the holders of twenty-five per cent. in principal amount of the notes then outstanding shall have made written request upon the Trustee, and shall have afforded to it a reasonable opportunity to institute such action, suit or proceeding in its own name, and unless also they shall have offered to the Trustee security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for thirty days after receipt of such notification, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding; and such notification, request and offer of indemnity are hereby declared in every such case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Agreement, and to any action or cause of action or for any remedy hereunder; it being understood and intended and being expressly covenanted by the taker and holder of every note issued hereunder, and every other taker and holder and the Trustee, that no one or more holders of notes and coupons shall have any right in any manner

whatever to affect, disturb or prejudice the rights of the holders of any other of such notes and coupons, or in any manner or way shall obtain or seek to obtain priority over or preference to any other such holders, or to enforce any right hereunder, or under or in respect of said notes or any of them, except in the manner herein provided, and for the equal, ratable and common benefit of all holders of such outstanding notes and coupons.

SECTION 7. The Company for itself, its successors and assigns, hereby agrees to waive, and does hereby absolutely and irrevocably waive, and relinquish the benefit and advantage of any and all valuation, stay, appraisement, extension or redemption law or laws now existing or which may hereafter be passed, which, but for this provision, agreement and waiver, might be applicable to any sale made under the judgment, order or decree of any court or courts based on any of said notes or interest coupons or this Agreement.

SECTION 8. All remedies specifically conferred on the Trustee under this Agreement shall be deemed cumulative and not exclusive, and no delay or omission of the Trustee or of any holder of any of the notes to exercise any right or power accruing upon any default, occurring and continuing as aforesaid, shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Article to the Trustee or to the note-holders may be exercised from time to time as often as shall be deemed expedient by the Trustee or by the note-holders.

ARTICLE VI.

EXEMPTION OF OFFICERS, DIRECTORS AND STOCKHOLDERS
FROM LIABILITY.

Each of the notes secured hereby is issued upon the express condition, to which each successive holder thereof expressly assents and by receiving the same agrees, that no recourse under or upon any obligation, covenant or agreement of this Agreement, or for the payment of any note or coupon hereby secured, or the indebtedness or any part thereof evidenced thereby shall be had to any individual liability of any incorporator, or any past, present or future stockholder, officer or director of the Company or of any successor company or of any company which may assume or guarantee the payment of the principal or interest of the notes issued hereunder, either directly or through the Company or through any such company by virtue of any constitutional or statutory provisions or by the enforcement of any assessment or of any unpaid installment on stock or otherwise, all such liability being taken to be waived, and it being expressly understood and agreed that this Agreement and the obligations issued hereunder are solely corporate obligations, and that no personal liability whatever shall attach to or be incurred by the incorporators, or by any past, present or future stockholders, directors or officers of the Company or of any successor company or of any corporation which may assume or guarantee the payment of the principal or interest of the notes issued hereunder, under or by reason of any of the obligations, covenants or agreements in this Agreement contained, or in any of the notes or coupons issued hereunder or implied therefrom or by reason of the assumption or guarantee thereof, and that any and all personal liability of every nature, either in law or in equity by statute or constitu-

tion of every such incorporator, stockholder, director and officer is hereby expressly waived as a condition of and consideration for the execution and issue of this Agreement and of such notes and coupons.

ARTICLE VII.

OWNERSHIP OF NOTES.

SECTION 1. Any demand, or request or other instrument required by this Agreement to be signed and executed by noteholders may be in any number of concurrent writings of similar tenor and may be signed or executed by such noteholders in person or by agent appointed in writing. Proof of the execution of any such demand, request or other instrument, or of the writing appointing any such agent, and of the ownership by any person of any note, shall be sufficient for any purpose of this Agreement, if such proof be made in the following manner:

(a) The fact and date of the execution by any person of any such demand, request or other instrument in writing may be proved by the certificate of any Notary Public or other officer authorized to take acknowledgments of deeds to be recorded, to the effect that the person signing such request or other instrument acknowledged to him the execution thereof, or by the affidavit of the witness to such execution.

(b) The fact of the holding by any noteholder of any unregistered notes and the amounts and numbers of such notes, and the date of his holding the same, may be proved either by producing and exhibiting to the Trustee the actual notes themselves, or by a certificate executed by any trust company, bank, banker or other depository, wherever situated, if such certificate shall be deemed by

the Trustee to be satisfactory, showing that at the date therein mentioned such person had on deposit with or exhibited to such depositary the notes described in such certificate. Such ownership shall be deemed to continue until written notice to the contrary is served upon the Trustee.

(c) The ownership of registered notes shall be proved by the registers of such notes or by a certificate of the registrar thereof.

SECTION 2. The Company and the Trustee may deem and may treat the bearer of any note issued hereunder, which shall not at the time be registered as to principal as hereinbefore authorized, and the bearer of any coupon for interest on any note, whether such note shall be registered or not, as the absolute owner of such note or coupon, as the case may be, for the purpose of receiving payment of such note or coupon, and for all other purposes whatsoever, whether such note or coupon be overdue or not, and neither the Company nor the Trustee shall be affected by any notice to the contrary.

The Company and the Trustee may deem and may treat the person in whose name any note shall be registered upon the books of the registrar as hereinbefore provided as the absolute owner of such note for the purpose of receiving payment of such note and for all other purposes whatsoever, whether such note be overdue or not, and neither the Company nor the Trustee shall be affected by any notice to the contrary.

ARTICLE VIII.

CANCELLATION OF AGREEMENT.

If, when all the notes issued hereunder shall have become due and payable under any provision thereof or of

this Agreement, the Company shall well and truly pay or cause to be paid the whole amount of the principal moneys (and premium if any), and interest due upon all such notes, or shall provide for such payment by depositing with the Trustee for the payment of such notes and coupons the entire amount then due or that may become due thereon for principal (and premium if any) and interest, and shall also pay or cause to be paid all other sums payable hereunder by the Company and shall well and truly keep and perform all the things required to be kept and performed by it, according to the true intent and meaning of this Agreement, then and in that case this Agreement shall cease to be of further effect, and the Trustee on demand and at the cost and expense of the Company shall execute proper instruments cancelling and discharging this Agreement.

ARTICLE IX.

CONCERNING THE TRUSTEE.

SECTION 1. The Trustee shall not be answerable for the default or the misconduct of any agent or attorney appointed in pursuance hereof, if such agent or attorney shall have been selected with reasonable care, nor responsible for anything whatever in connection with this trust except for its willful misconduct or willful default. The Trustee shall be under no obligation to take any action toward the execution or enforcement of the trusts hereby created which, in its opinion, shall be likely to involve it in expense or liability, unless one or more of the holders of notes issued hereunder shall, as often as required by the Trustee, furnish indemnity satisfactory to the Trustee against such expense or liability; nor shall the Trustee be required to take notice of any default or Event of Default hereunder, and it may, for all purposes, conclusively

assume that there has been no default or Event of Default hereunder, unless and until notified in writing thereof by the holders of at least twenty-five per cent. in principal amount of the notes issued hereunder and then outstanding, or to take any action in respect to any default or Event of Default unless requested to take action in respect thereof by a writing signed by the holders of not less than twenty-five per cent. in principal amount of the notes issued hereunder and then outstanding, and upon being tendered indemnity as hereinbefore provided. The foregoing provisions of this Section are intended only for the protection of the Trustee and shall not be construed to affect any discretion or power by any provision of this Agreement given to the Trustee to determine whether or not it shall take action in respect of any default or Event of Default without such notice or request from the noteholders, or to affect any other discretion or power given to the Trustee.

Any action by the Trustee upon the request of any person who at the time is the owner of any such notes, shall be conclusive and binding upon all future owners of the same notes.

This Agreement need not be recorded, registered or filed by the Trustee.

The Trustee shall incur no liability to anybody in acting upon any notice, request, opinion, consent, certificate, note, document, or paper believed by it to be genuine or to have been signed or sent by the proper persons.

The Trustee may receive a certificate under the corporate seal of the Company and signed by the Secretary or an Assistant Secretary of the Company as sufficient evidence of the due adoption of any resolution by the Board of Directors of the Company. The Trustee may rely upon, and shall incur no liability for

any action taken by it in reliance upon any such certificate or resolution so certified.

The Trustee shall be reimbursed by the Company upon demand for, and be indemnified against, any liability or damages which may be sustained by it in the premises. The Trustee shall have a claim prior to that of any note or coupon issued hereunder for its compensation and expenses, and also for any liability or damage by it sustained in the premises.

The Trustee makes no undertaking in respect of, and shall not be responsible in any manner whatsoever for, the validity or execution of this Agreement or of any of the notes issued hereunder or the recitals herein or in said notes contained, all such recitals being made and to be taken as statements of the Company solely; nor shall the Trustee be accountable or responsible for the use of any notes certified and delivered hereunder, or for the application of the proceeds of such notes, or for the performance or fulfillment of any covenant or agreement herein provided to be kept by the Company. The Trustee may advise with counsel, and any action taken or suffered under this Agreement in good faith by the Trustee, in accordance with the opinion of counsel, shall be conclusive on the Company and on all holders of notes issued hereunder, and the Trustee shall be fully protected in respect to any such action.

Anyone holding the office of Trustee hereunder may from time to time purchase, acquire, hold, own and deal in any of the notes issued hereunder, and assert its rights in respect thereof in the same manner as any other noteholder hereunder.

Any moneys received by the Trustee under any provision of this Agreement, may be treated by it, until it is required to pay out the same conformably herewith, as a general deposit, without any liability for interest, save

as may be agreed upon between the Company and the Trustee.

The Trustee shall be entitled to reasonable compensation for all services rendered by it in the execution of the trusts hereby created, including reasonable counsel fees for the services of counsel in connection with the execution of such trusts, and the Company hereby agrees to pay such compensation, as well as all expenses necessarily incurred or disbursed by the Trustee hereunder. In case of non-payment of any such compensation or expenses, the amount unpaid shall be a claim against the Company and a lien upon any and all moneys collected under this Agreement prior to the notes and coupons issued hereunder. The compensation of the Trustee shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust.

SECTION 2. Any company into which the Trustee may be merged, or with which it may be consolidated, or any company resulting from any merger or consolidation to which the Trustee shall be a party, shall be the successor of the Trustee hereunder, without the execution or filing of any paper or any further action on the part of any of the parties hereto, anything herein to the contrary notwithstanding. In case any of the notes issued hereunder shall have been authenticated but not delivered, then the successor Trustee may adopt the certificate of authentication of the Guaranty Trust Company of New York and deliver the same so authenticated; and in case any of such notes shall not have been authenticated, any successor Trustee may authenticate such notes by the Secretary or Assistant Secretary of the successor trustee; and in all such cases such certificate shall have the full force which it is anywhere in said notes or in this Agreement provided that the certificate of the original Trustee shall have.

SECTION 3. The Trustee or any trustee or trustees hereafter appointed, may resign the trusts hereby created and become and remain fully discharged from all further duty or responsibility hereunder, upon giving thirty days notice in writing to the Company or any officer thereof, personally or by mailing, or such shorter notice as the Company may accept as sufficient, in which notice there shall be stated a date when such resignation shall take effect; and such resignation shall take effect on the day specified in said notice unless previously a successor trustee shall be appointed, as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of such successor trustee. The Trustee may be removed from office at any time by an instrument in writing under the hands of the holders of a majority in principal amount of the notes issued hereunder and then outstanding, subject to the right of the Trustee to receive reasonable compensation for its services and repayment of all costs, charges and expenses incurred.

SECTION 4. In the event of the resignation or removal of the Trustee, it is hereby provided and agreed that the Company shall nominate and appoint a new trustee in its place and stead. Said appointment shall be attested by the certificate in writing of the President or a Vice-President and Secretary or an Assistant Secretary of the Company, under its corporate seal.

Immediately upon such appointment the Company shall give notice thereof by publication in at least one newspaper published in the City of New York, once a week for at least four successive weeks. Within ninety days after the commencement of such publication the holders of a majority in principal amount of the notes issued hereunder and then outstanding shall have power

to nominate and appoint, by an instrument in writing signed by such majority, another trustee in the place and stead of the one so appointed by the Company. If the owners and holders of a majority in principal amount of the notes issued hereunder and then outstanding shall not make such nomination and appointment within said ninety days, then the trustee so nominated and appointed by the Company shall continue to act as, and be the Trustee hereunder.

Any trustee appointed hereunder shall always be a trust company in good standing, having its principal office in the Borough of Manhattan, City of New York, and having a capital and surplus of not less than \$1,000,000, if there be such a trust company willing and able to accept the trust upon reasonable or customary terms.

Any such new trustee appointed hereunder shall execute, acknowledge and deliver to the Company an instrument accepting such appointment hereunder, and thereupon such successor trustee without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts, duties and obligations of its predecessor in the trust hereunder, with like effect, as if originally named as trustee hereunder; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee upon the trusts herein expressed, all the rights, powers and trusts of the trustee so ceasing to act. Upon request of any such successor trustee the Company shall make, execute, acknowledge and deliver any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee, all such rights, powers and duties.

ARTICLE X.

MISCELLANEOUS PROVISIONS.

SECTION 1. All the covenants, stipulations, promises and agreements in this Agreement contained, by or in behalf of the Company, shall bind its successors and assigns, whether so expressed or not, and are for the common and equal use, benefit and security of all and singular the present and future holders or owners of notes issued hereunder, or of any of them, without preference, priority or distinction of any of said notes over any of the others by reason of priority in the issue, sale or negotiation thereof, or otherwise.

SECTION 2. Nothing in this Agreement or in the notes or coupons issued hereunder, expressed or implied, is intended or shall be construed to give to any person or corporation other than the parties hereto and the holders of notes issued under this Agreement, any legal or equitable right, remedy or claim under or in respect to this Agreement, or under any covenant, condition or provision herein contained; all its covenants, conditions and provisions being intended to be and being for the sole and exclusive benefit of the parties hereto and of the holders of the obligations hereby secured.

SECTION 3. In case the Company shall be consolidated or merged with any other corporation, the successor corporation formed by such consolidation or into which the Company shall have been merged—upon executing an instrument satisfactory to the Trustee whereby such successor corporation shall assume the due and punctual payment of the principal and interest of the notes issued hereunder and the performance of all the covenants and conditions of this Agreement—shall succeed to and be

substituted for the Company, party of the first part hereto, with the same effect as if it had been named herein as such party of the first part.

SECTION 4. For every purpose of this Agreement, including the execution, issue and use of any and all notes issuable hereunder, the terms "Company" and "The American Tobacco Company," include and mean not only the party of the first part hereto but also any successor corporation formed by consolidation or otherwise, under the laws of the State of New Jersey or of any State or States or of the United States. Every such successor corporation shall possess and from time to time may exercise each and every right and power hereunder of The American Tobacco Company, in its name, or otherwise.

Any act or proceeding by any provision of this Agreement required to be done or performed by any Board or Officer of the Company shall and may be done and performed with like force and effect by the like Board or Officer of any Corporation that shall at the time be such lawful successor of the Company.

SECTION 5. The word "Trustee" shall include and mean the Guaranty Trust Company of New York and any successor Trustee; the words "note" and "noteholder" shall include the plural as well as the singular number, unless otherwise expressly indicated. The word "coupons" refers to the interest coupons attached to the notes issued hereunder. The word "person" used with reference to a noteholder shall include associations, or corporations owning any of said obligations.

SECTION 6. This Agreement is made and is to be performed in the State of New York. This Agreement and the rights and remedies of the parties hereto and of the

holders of the notes and appurtenant coupons shall be governed by the laws of the State of New York.

IN WITNESS WHEREOF, THE AMERICAN TOBACCO COMPANY, party of the first part, has caused this Agreement to be executed and acknowledged by its President or a Vice-President, and its corporate seal to be hereunto affixed and attested by the signature of its Secretary or an Assistant Secretary, and Guaranty Trust Company of New York, party of the second part, has caused this Agreement to be executed by one of its Vice-Presidents, and its corporate seal to be hereunto affixed and attested by the signature of its Secretary or an Assistant Secretary, all as of this day and year first above written.

THE AMERICAN TOBACCO COMPANY,

CHARLES S. KEENE

[CORPORATE SEAL]

Vice-President.

Attest:

CHARLES F. NEILEY

Secretary.

GUARANTY TRUST COMPANY OF NEW YORK,

By JAMES L. O'NEILL

[CORPORATE SEAL]

Vice-President.

Attest:

H. R. JOHNSTON

Asst. Secretary.

STATE OF NEW YORK }
 County of New York } ss.:

On the 2nd day of November, in the year one thousand nine hundred and eighteen, before me personally came Chas. S. Keene, to me known, who being by me duly sworn, did depose and say that he resides in New York City, N. Y.; that he is a Vice President of The American Tobacco Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

THOMAS F. MOORE
 Notary Public, New York County,
 New York County No. 176, New York Register No. 10025
 Commission expires November 30, 1920.

[NOTARIAL SEAL]

STATE OF NEW YORK, }
 County of New York, } ss.:

On the 2nd day of November, in the year one thousand nine hundred and eighteen, before me personally came Jas. L. O'Neill, to me known, who, being by me duly sworn, did depose and say that he resides in Newark, N. J.; that he is one of the Vice-Presidents of Guaranty Trust Company of New York, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

THOMAS F. MOORE
 Notary Public, New York County,
 New York County No. 176, New York Register No. 10025
 Commission expires November 30, 1920.

[NOTARIAL SEAL]



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